

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  U S WEST COMMUNICATIONS, INC., n/k/a QWEST CORPORATION	DOCKET NOS. INU-00-2 SPU-00-11
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**STATEMENT ADDRESSING MISCELLANEOUS FILINGS**

(Issued December 4, 2002)

On February 10, 2000, the Utilities Board (Board) issued an order initiating an investigation relating to the possible future entry of U S WEST Communications, Inc., n/k/a Qwest Corporation (Qwest), into the interLATA market. The investigation was identified as Docket No. INU-00-2.

In a filing dated May 4, 2000, Qwest encouraged the Board to consider a multi-state process for purposes of its review of Track A (competition issues),<sup>1</sup> various aspects of each item on the fourteen-point competitive checklist, section 272 (separate subsidiary) issues, and public interest considerations. The Board considered the concept of a multi-state process for purposes of its review of a Qwest application to provide in-region, interLATA services, sought comment, and subsequently issued an order dated August 10, 2000, indicating that its initial review of Qwest's compliance with the requirements of 47 U.S.C. § 271 would be through participation in a multi-state workshop process with the Idaho Public Utilities Commission, North Dakota Public Service Commission, Montana Public Service

Commission, Wyoming Public Service Commission, and Utah Public Service Commission. Since the time of its order, the New Mexico Public Regulation Commission also joined in the workshop process.

The multi-state workshop process was successful in narrowing and resolving many of the section 271 issues that did not require state-specific information. Following evidentiary workshops, which included a total of 38 hearing days, The Liberty Consulting Group (Liberty)<sup>2</sup> issued a total of five separate reports containing proposed decisions for each of the checklist items. As specified by the Board, following the filing of each of the reports by Liberty, participants were permitted to file comments or briefs addressing the issues that remained in dispute.<sup>3</sup> Following the issuance of each of the individual reports, the Board reviewed the record, the report filed by Liberty, and the post-report filings before issuing a conditional statement on each of the checklist items. Each of the conditional statements contained a determination of the issues remaining at impasse.

In August of 2000, a collaborative process was initiated with 11 of the 14 Qwest state public service commissions participating. The process was known as the Post-Entry Performance Plan (PEPP) collaborative. Between October of 2000 and May of 2001, five separate multi-day workshops were convened, numerous conference calls were placed, and large quantities of information, proposals, and

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<sup>1</sup> See, 47 U.S.C. § 271(c)(1)(A).

<sup>2</sup> The Liberty Consulting Group (Liberty) was retained to assist the state commissions collectively by making recommendations for resolution of impasse issues.

supporting data were exchanged and reviewed in an attempt to create a "consensus plan."

The PEPP collaborative ended in May of 2001 when Qwest representatives indicated a reluctance to continue with further meetings in the current format, expressing a belief that no further consensus could be reached. A final collaborative summary was prepared by MTG Consulting (MTG) and the National Regulatory Research Institute (NRRI) and distributed on June 5, 2001. This summary document contained a list of agreements that had been reached through the collaborative process as well as a list of unresolved issues.<sup>4</sup>

A telephonic procedural conference was held on August 3, 2001, by Liberty to discuss the possibility of utilizing the multi-state checklist compliance proceedings (seven state commissions were at that time participating) to consider the section 271-affecting aspects of the performance assurance plan that Qwest intended to file in each state. Ultimately, the seven multi-state workshop states became a nine-state workshop collaborative, with the Washington Utilities and Transportation Commission and Nebraska Public Service Commission joining the effort.

Procedures were established to allow all participants to file comments and testimony in response to the proposed Qwest performance assurance plan (QPAP),

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<sup>3</sup> See, Process For Evaluation of Impasse Issues, Performance Assurance Plan, and Updated SGAT, issued August 15, 2001, p. 2.

<sup>4</sup> This "Final Collaborative Summary" can be viewed at [http://www.nrri.ohio-state.edu/oss/Post271/Post271/final\\_report.pdf](http://www.nrri.ohio-state.edu/oss/Post271/Post271/final_report.pdf).

which was filed on or about July 16, 2001, in substantially the same form with all nine collaborating state commissions. Qwest was then permitted to file pre-hearing responses to those comments.

Hearings were scheduled and held during the weeks of August 13 and August 27, 2001. Those hearings included direct, rebuttal, and surrebuttal testimony. In all, 11 witnesses testified during seven days of hearings. Following the hearings, briefs and reply briefs were filed and considered by Liberty, culminating in the filing of a sixth report covering public interest and performance assurance plan issues. Again following the same process as was used in evaluating impasse issues related to the checklist items, the Board afforded participants an opportunity to file responsive comments to the Liberty report. It then considered the record, Liberty's report, and the post-report filings in making its determinations as outlined in its conditional statements on public interest and the QPAP.

The Board participated in a 13-state collaborative effort to evaluate access to Qwest's operational support systems (OSS). KPMG Consulting, Inc. (KPMG), and Hewlett-Packard Consulting (HP) were consultants hired by the Regional Oversight Committee (ROC) for Qwest states to conduct the test of Qwest's OSS. The consultants jointly issued a final report, the culmination of a collaborative effort spanning two and a half years, on May 28, 2002. Information about the ROC OSS collaborative, including the final report, can be accessed at <http://www.nrri.ohio-state.edu/oss/oss.htm>.

The Master Test Plan for the OSS test included 13 major testing sections covering 32 specific transaction and process tests for which results are included in the final report. The vendors initiated over 6,500 transactions to exercise Qwest's systems and processes. In addition, KPMG performed over 1,000 field observations of commercial transactions between Qwest and its competitors. During testing, the vendors encountered 497 issues that were documented as observations and exceptions, all of which were investigated and closed. Of the total documented issues, 487 were resolved completely, leaving ten exceptions that were closed/unresolved with some remaining issues not fully resolved. Additionally, a performance measure audit was previously performed by Liberty with results separately published.

Throughout this process the Board has issued a number of conditional statements resolving impasse issues. The following is a comprehensive list of the conditional statements the Board has issued.

- Conditional Statement Regarding March 19, 2001, Report, issued June 22, 2001 – Checklist items 3, 7, 8, 9, 10, and 12.
- Conditional Statement Regarding May 15, 2001, Report, issued October 12, 2001 – Checklist items 1, 11, 13, and 14.
- Conditional Statement Regarding June 11, 2001, Report "Third Report," issued October 31, 2001 – Emerging Services.
- Conditional Statement Regarding August 20, 2001, Report, issued December 21, 2001 – Checklist items 2, 4, 5, and 6.
- Conditional Statement Regarding Public Interest and Track A, issued January 25, 2002.

- Conditional Statement Regarding General Terms and Conditions and Order Regarding Change Management Process Comments, issued March 12, 2002.
- Conditional Statement Regarding 47 U.S.C. § 272 Compliance, issued April 4, 2002.
- Conditional Statement Regarding Qwest Performance Assurance Plan issued May 7, 2002.
- Conditional Statement Reconsidering Board Conditional Statement Regarding August 20, 2001, Report, issued May 9, 2002 – Enhanced Extended Links (EEL) issue.
- Reconsideration of Conditional Statement Regarding 47 U.S.C. § 272 Compliance issued May 28, 2002.
- Reconsideration of Conditional Statement Regarding Checklist Item 14: Resale, issued May 28, 2002.
- Reconsideration of Conditional Statement Regarding Checklist Item 13: Reciprocal Compensation, issued May 31, 2002.
- Reconsideration of Conditional Statement Regarding Checklist Item 11: Local Number Portability, issued May 31, 2002.
- Conditional Statement Regarding Change Management Process Compliance, issued June 6, 2002.
- Conditional Statement Regarding Data Reconciliation of Performance Measures in the ROC OSS Test, issued June 6, 2002.
- Order to Consider Unfiled Agreements, issued June 7, 2002 – Relevance of unfilled agreement on the public interest determination.
- Conditional Statement Reconsidering Public Interest, issued June 7, 2002 – Reconsideration of price squeeze argument.
- Reconsideration of Conditional Statement Regarding Qwest Performance Assurance Plan, issued June 7, 2002.
- Conditional Statement Regarding Qwest Communications' OSS Evaluation and Order Closing Inquiry Docket, issued June 10, 2002.

- Order Denying Petition to Intervene and Motion to Reopen Proceedings, issued June 11, 2002.
- Final Statement Regarding Qwest Corporation's Compliance with 47 U.S.C. §§ 271 and 272 Requirements, issued June 12, 2002.

As the Board indicated in its June 12, 2002, final statement, it was prepared at that time to indicate that the record established that Qwest had adequately addressed the section 271 requirements. The Board noted that it would continue to monitor Qwest's performance in the future to prevent backsliding and to ensure that the doors to competition remain open.

**I. INCLUSION OF PO-20, ELIMINATION OF MR-12, AND MODIFICATIONS TO MR-11 REGARDING QWEST PERFORMANCE ASSURANCE PLAN**

On August 19, 2002, Qwest filed a request that an additional performance indicator definition (PID) be approved for inclusion in its QPAP, along with its proposed payment scheme for new PID, PO-20. The stated purpose of PO-20 is to evaluate "the degree to which Qwest accurately processes CLECs' Local Service Requests (LSRs), which are electronically submitted and manually processed by Qwest, into Qwest Service Orders." The request for the Board to approve this addition was made pursuant to an agreement made by Qwest in an *ex parte* communication with the FCC.<sup>5</sup>

AT&T and WorldCom filed comments related to the inclusion of PO-20 into Qwest's QPAP on September 3, 2002, opposing the Board's approval. AT&T and WorldCom appeared to be most concerned that this PID was developed outside the

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<sup>5</sup> *Ex parte* letter filed August 9, 2002, by Yaron Dori, Counsel for Qwest.

collaborative process established through the ROC test. In addition, specific concerns were described in the AT&T and WorldCom filing.

Qwest responded to the comments of AT&T and WorldCom on September 13, 2002, noting that the request to include PO-20 resulted directly from an agreement with the FCC in the course of its review of Qwest's 271 application. Qwest acknowledged its previous statement that the acceptance of this PID does not preclude further development through a collaborative or other process.

On September 25, 2002, AT&T filed a copy of the Colorado Public Utilities Commission's order denying Qwest's request for inclusion of PO-20. Qwest filed a copy of an order approving the inclusion of PO-20 issued by the Washington Utilities and Transportation Commission (UTC) on September 23, 2002. The Washington UTC indicated that the PID would be "subject to intensive review and possible changes during any collaborative multi-state review of performance measures and the six-month review process, if necessary." A copy of a Montana Public Service Commission notice of action was filed by AT&T on October 14, 2002. The Montana PSC directed Qwest to develop PO-20 using a collaborative process that includes other interested parties and to refile the resulting performance measurement as part of the first six-month review of the performance assurance plan.

Although at least two other states have denied Qwest's motion to include PO-20 in its QPAP, it appears to the Board that no disadvantage could come to any party (other than perhaps Qwest) by its inclusion. Inclusion does not eliminate any previously approved payment obligations by Qwest, but rather allows an additional



payment possibility to be borne by Qwest. Clearly it would be advantageous to have all PIDs developed through the previously-established collaborative process, however, it does not appear in this instance to be a requirement. The request that PO-20 be included in Qwest's performance assurance plan is approved. The Board does note that PO-20 should be reviewed, and modified if necessary, during the initial six-month review process.

On November 27, 2002, Qwest made a filing requesting the Board recognize changes to the PIDs resulting from ongoing collaboration through the ROC OSS process. The most current version of the ROC PIDs were included as Exhibit B to the statement of generally accepted terms and conditions (SGAT) filed with the Board on June 10, 2002. In Version 5.0, MR-12, "LNP Trouble Reports – Mean Time to Restore," was eliminated from the ROC PIDs and MR-11, "LNP Trouble Reports Cleared," was disaggregated into subsections A and B. The new MR-11A measures out of service cleared within four hours, rather than 24 hours as previously specified in the former MR-11, with a diagnostic standard where OP-17's standard is met. Additionally, the new MR-11B measures trouble reports cleared within 48 hours, with a benchmark of 95 percent, except where volumes are less than 20. Where volumes are less than 20, the standard is no more than one trouble cleared in more than 48 hours.

According to Qwest's filing, AT&T and WorldCom were contacted and have no objection to this clarification. The Board agrees that this clarification is appropriate. Further, as provided by the language of the SGAT, this change is applicable without

amendment to any Exhibit K that has already been incorporated into an interconnection agreement through prior amendment.

## **II. MOTION TO REOPEN AND SUPPLEMENT THE RECORD**

In a filing on September 18, 2002, AT&T requested the Board to reopen the record in this proceeding and require Qwest to supplement the record with sufficient evidence to demonstrate that its new section 272 affiliate is in compliance with section 272. According to its motion, AT&T's request was prompted by an *ex parte* filing made August 20, 2002, by Oren G. Shaffer, Qwest's Chief Financial Officer. In that letter, the following statement was made:

In light of the developments in the ongoing internal investigation, QCII is currently unable to certify that QCC's or QC's financial statements are accounted for consistently with GAAP, and paragraphs of the Declarations are impacted accordingly.

In a public notice issued August 29, 2002, the FCC requested comment on the exact issues raised by AT&T before this Board. In comments filed with the FCC on September 4, 2002, the Board indicated that it remained confident that Qwest was in substantial compliance with GAAP, even though it could not technically certify compliance, because of potential restatements of prior financial statements that may carry forward. The Board specifically noted:

Although it is clear from Mr. Shaffer's letters that some restatement of prior financial statements is anticipated, not once has a question been raised regarding the current transactions between the BOC and the section 272 affiliate. Due to the very nature of "cumulative" financial statements, any restatement of prior periods will have an effect on the beginning balances for the current statements. It appears that Mr. Shaffer was simply trying to ensure that the FCC

and other interested parties received full disclosure of the possible effect that the investigation of prior periods might have.

Qwest filed an opposition to AT&T's motion to reopen the proceeding on September 20, 2002, which was followed on September 24, 2002, by AT&T's reply to the opposition. The Board sees nothing in those additional filings that changes its views as expressed in its comments filed September 4, 2002, with the FCC. Therefore, the motion to reopen the proceeding and require Qwest to supplement the record is denied.

### **III. OTHER MISCELLANEOUS MOTIONS AND FILINGS**

Since the Board issued its final statement regarding Qwest's compliance with 47 U.S.C. §§ 271 and 272 requirements on June 12, 2002, several miscellaneous filings have been made that need to be addressed. The following is a list of filings that have not previously been addressed:

- AT&T's Comments on the Data Reconciliation Report of Qwest's Performance Measures – filed June 11, 2002
- AT&T's Comments on the ROC OSS Final Report – filed June 13, 2002
- Touch America's Reply to Qwest's Opposition and the Board's Order Denying Touch America's Petition to Intervene – filed June 14, 2002
- AT&T's Notice of Qwest's Non-Compliance with Board's Orders Regarding the Qwest Performance Assurance Plan, and Motion for Reconsideration of Board's Final Statement Regarding Qwest Corporation's Compliance with 47 U.S.C. §§ 271 and 272 Requirements – filed June 14, 2002
- Response of Qwest Corporation to AT&T's Notice of "Non-Compliance" – filed June 20, 2002
- AT&T's Reply to "Response of Qwest Corporation to AT&T's Notice of Non-Compliance" – filed June 24, 2002

In reviewing each of these filings, no new information was brought forward for the Board's consideration. These were simply restatements of the same arguments that were previously considered and dismissed by the Board. Any requests contained in these filings are denied.

The Board continues to recommend that the FCC grant Qwest's application for entry into the in-region, interLATA service market for the State of Iowa.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 4<sup>th</sup> day of December, 2002.